

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 14-48553

SHANIKA TANAE SMITH, *pro se*,

Chapter 7

Debtor.

Judge Thomas J. Tucker

**ORDER DENYING MOTION TO WAIVE CREDIT COUNSELING
REQUIREMENT, AND DISMISSING CASE**

On May 16, 2014, the Debtor filed a voluntary petition for relief under Chapter 7, commencing this case (Docket #1) and a motion entitled “Motion For/To Waive Credit Counseling” (Docket # 10, the “Motion”).¹ In the Motion, Debtor states that she is unable to sustain necessities due to the garnishment of her wages, that she does not have affordable housing, and is unable to find affordable counseling.

For the following reason, the Court must deny the Motion and dismiss this case.

11 U.S.C. § 109(h)(1) provides in relevant part, that

an individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

11 U.S.C. § 109(h)(4) provides a limited exception to § 109(h)(1)’s requirement of obtaining a credit counseling briefing on or before the date of filing the bankruptcy petition. It provides:

¹ Also on May 16, 2014, Debtor filed an “Exhibit D - Individual Debtor’s Statement of Compliance With Credit Counseling Requirement” (Docket # 3, “Exhibit D”). On Exhibit D, Debtor checked the box before numbered paragraph 3, seeking a temporary waiver of the credit counseling requirement due to exigent circumstances. On her Exhibit D, Debtor stated that the exigent circumstances consisted of her “wages being garnished” and the payment of “rent and getting food and necessities were more of a pressing demand.” But, Debtor stated, she did “intend to obtain[] the counseling.” The Court notes that while the Debtor did file a certification as required by 11 U.S.C. § 109(h)(3), she failed to file a “motion for approval of the certification,” and serve such motion on all creditors, all as required by L.B.R. 1007-6(a) (E.D. Mich.).

(4) The requirements of paragraph (1) shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and “disability” means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).

The Debtor’s Motion must be denied because it does not demonstrate any of the grounds for such relief contained in 11 U.S.C. § 109(h)(4). It does not allege or demonstrate that the Debtor was “unable to complete” the required credit counseling briefing on or before the day the bankruptcy petition was filed “because of incapacity, disability, or active military duty in a military combat zone.”

For this reason, the Motion must be denied. And Debtor must meet the requirement of 11 U.S.C. § 109(h)(1), that she obtain the required credit counseling briefing *on or before* the date of filing her bankruptcy petition, to be eligible to be a debtor in this case. Because the Debtor did not meet this requirement, she is not eligible to be a debtor in this case under 11 U.S.C. § 109(h)(1), and this case must be dismissed.

Accordingly,

IT IS ORDERED that:

1. The Motion (Docket # 10) is denied.
2. This bankruptcy case is dismissed.

Signed on June 28, 2014

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge